

HOUSE BILL No. 1133

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-13.

Synopsis: Collective bargaining for public safety employees. Allows the police officers and firefighters of a county, city, town, or township to bargain collectively with their employers through an exclusive representative. Specifies the rights and duties of public safety employees and employers in collective bargaining. Requires the education employment relations board to implement and administer the collective bargaining law. Provides for judicial review of complaints, mediation, and arbitration. Prohibits public safety lockouts and strikes.

Effective: Upon passage; July 1, 2007.

Tyler

January 8, 2007, read first time and referred to Committee on Labor and Employment.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1133

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-13 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 3 2007]:
- 4 **ARTICLE 13. COLLECTIVE BARGAINING FOR PUBLIC**
- 5 **SAFETY EMPLOYEES**
- 6 **Chapter 1. Applicability**
- 7 **Sec. 1. Except as otherwise provided, this article applies to all**
- 8 **units.**
- 9 **Chapter 2. Definitions**
- 10 **Sec. 1. The definitions in this chapter apply throughout this**
- 11 **article.**
- 12 **Sec. 2. "Bargain collectively" means to perform the obligation**
- 13 **of an employer through the employer's executive or designee and**
- 14 **the designee of the exclusive representative to do the following:**
- 15 **(1) Meet at reasonable times, including meetings before the**
- 16 **budget making process.**
- 17 **(2) Negotiate in good faith concerning the following:**

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(A) Salaries.

(B) Wages.

(C) Hours.

(D) Fringe benefits related to salary and wages.

(E) All other terms and conditions of employment, including health and safety conditions.

(3) Execute a written contract incorporating an agreement if a written contract is requested by either party.

Sec. 3. "Bargaining unit" means the full-time employees of a police or fire department who have completed the training required by IC 5-2-1-9. The term does not include a person in an upper level policymaking position (as defined in IC 36-8-1-12), except a person in an upper level policy making position included in an agreement in effect on June 30, 2007.

Sec. 4. "Board" refers to the Indiana education employment relations board established by IC 20-29-3-1.

Sec. 5. "Complainant" means an employer, employee, employee organization, or exclusive representative that files a complaint with the board under IC 36-13-4.

Sec. 6. "Employee" means an individual who is a member of a bargaining unit.

Sec. 7. "Employee organization" means an organization in which employees participate that exists to deal with an employer concerning any of the following:

- (1) Grievances.
- (2) Labor disputes.
- (3) Wages.
- (4) Rates of pay.
- (5) Hours of employment.
- (6) Employment conditions.

Sec. 8. "Employer" means either of the following:

- (1) A unit to which this article applies.
- (2) An individual designated by a unit to which this article applies to act in the unit's interests in dealing with employees.

Sec. 9. "Exclusive representative" means an employee organization that is:

- (1) certified under IC 36-13-3-8 by the board; or
- (2) recognized by the employer as the exclusive representative of the employees in a bargaining unit.

Sec. 10. "Respondent" means a person against whom a complainant files a complaint under IC 36-13-4.

Sec. 11. "Strike" means concerted:

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- (1) willful absence from the employee's position;
- (2) willful abstinence from the full performance of the duties of employment; or
- (3) stoppage of work.

Chapter 3. Employee Organizations

Sec. 1. The board shall implement and administer this chapter and IC 36-13-4 through IC 36-13-5. To do so, the board may exercise the powers granted to the board under IC 20-29-3.

Sec. 2. Employees may do the following:

- (1) Form, join, or participate in employee organizations.
- (2) Participate in collective bargaining with the employer through representatives of the employees' choosing.
- (3) Individually or in concert, engage in other activities to establish, maintain, or improve the following:
 - (A) Salaries.
 - (B) Wages.
 - (C) Hours.
 - (D) Fringe benefits related to salary and wages.
 - (E) All other terms and conditions of employment, including health and safety conditions.

Sec. 3. An employer shall manage and direct the employer's operations and activities to the extent authorized by law.

Sec. 4. An employer may do the following:

- (1) Establish policy.
- (2) Direct the work of an employee, except when otherwise provided by law.
- (3) In accordance with law and collective bargaining agreement:
 - (A) hire;
 - (B) promote;
 - (C) demote;
 - (D) transfer;
 - (E) assign; and
 - (F) retain;
 an employee.
- (4) Suspend or discharge an employee in accordance with law.
- (5) Maintain the efficiency of governmental operation.
- (6) Take action necessary to carry out the mission of the police department and fire department.
- (7) Protect the fiscal soundness of and continue public safety services.

Sec. 5. In accordance with rules adopted by the board, the board

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shall investigate a petition filed with the board by:

(1) an employee organization alleging that at least thirty percent (30%) of the employees in the appropriate bargaining unit wish to be represented by an exclusive representative for collective bargaining purposes;

(2) an employer alleging that at least one (1) employee organization has presented a claim to be recognized as the exclusive representative in an appropriate bargaining unit; or

(3) an employee or a group of employees alleging that at least thirty percent (30%) of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the bargaining unit.

Sec. 6. If the board has reason to believe that a question of representation exists, the board shall conduct a hearing not later than thirty (30) days after a petition regarding this issue is filed with the board. After the hearing, the board shall do the following if the board finds that a question of representation exists:

(1) Direct an election by secret ballot to be held not later than thirty (30) days after the hearing.

(2) Certify the results not later than ten (10) days after the election.

Sec. 7. If the parties referred to in section 5 of this chapter waive the hearing under section 6 of this chapter, the board is not required to conduct the hearing before a consent election.

Sec. 8. The board shall determine who is eligible to vote in an election under section 6 of this chapter and shall establish rules governing the election, subject to the following conditions:

(1) To be placed on the ballot, an employee organization must be designated as the desired exclusive representative by more than ten percent (10%) of the employees in the unit.

(2) If none of the choices on the ballot receives a majority of votes in an election but a majority of all votes cast are for representation by some employee organization, the board shall conduct a runoff election.

(3) An employee organization that receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

Sec. 9. An election may not be directed in a bargaining unit or in a subdivision of a bargaining unit within which a valid election has been held in the preceding twelve (12) months.

Sec. 10. Notwithstanding sections 5 through 8 of this chapter, an

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1 employer shall recognize a particular employee organization as the
 2 exclusive representative of the employees within an appropriate
 3 bargaining unit if the employee organization presents to the
 4 employer evidence that the employee organization represents a
 5 majority of the employees within the bargaining unit, unless an
 6 employee organization or a group of employees representing
 7 employees within the bargaining unit files a written objection to
 8 recognition with the employer or the board.

9 **Sec. 11. If:**

10 (1) under section 10 of this chapter, an employee organization
 11 provides an employer with evidence that the employee
 12 organization represents a majority of the employees within an
 13 appropriate bargaining unit; and

14 (2) no written objection to the recognition of the employee
 15 organization as the exclusive representative of the employees
 16 within the bargaining unit is filed under section 10 of this
 17 chapter by another employee organization or a group of
 18 employees representing the employees within the bargaining
 19 unit;

20 the board is not required to hold a hearing or to direct an election
 21 on the question of whether the employee organization referred to
 22 in subdivision (1) shall be recognized as the exclusive
 23 representative of the employees within the bargaining unit.

24 **Sec. 12.** Before recognizing an employee organization as an
 25 exclusive representative under section 10 of this chapter, the
 26 employer must post a written public notice of the employer's
 27 intention to recognize the employee organization as the exclusive
 28 representative of the employees within the bargaining unit. The
 29 notice must be posted for at least thirty (30) days immediately
 30 preceding the recognition in a location at the worksite where
 31 notices to employees are customarily posted.

32 **Sec. 13.** In a case in which:

33 (1) there is a historical pattern of recognition; and

34 (2) the employer has recognized an employee organization as
 35 the sole and exclusive bargaining agent for an existing
 36 bargaining unit;

37 the board shall find that the employees in the bargaining unit are
 38 represented by the employee organization and recognize the
 39 employee organization as the exclusive representative.

40 **Sec. 14.** A determination made under this chapter that an
 41 employee organization has been chosen as the exclusive
 42 representative by a majority of the employees in an appropriate

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bargaining unit is subject to judicial review under the same procedure, time limits, and other requirements as are set forth in IC 36-13-4-12 through IC 36-13-4-22 for review of an order of the board. The record of the board's determination of the appropriate bargaining unit and the exclusive representative may be a part of the transcript of a proceeding under this section.

Sec. 15. An employer, upon receipt of a written authorization from an employee subject to this chapter, shall:

- (1) deduct from the pay of the employee the dues, fees, or assessments designated by the employee organization; and
- (2) remit those amounts to the employee organization.

Sec. 16. A collective bargaining agreement with an employee organization that is recognized as an exclusive representative under this chapter may include a provision requiring an employee who is:

- (1) covered by the collective bargaining agreement; but
- (2) not a member of the employee organization;

to pay a proportionate share of the costs of the collective bargaining process, contract administration, and matters affecting wages, hours, and conditions of employment. This proportionate share may not exceed the amount of dues, fees, or assessments uniformly required of members of the employee organization.

Sec. 17. An employee organization referred to in section 16 of this chapter shall certify to an employer the amount constituting each nonmember employee's proportionate share of the costs of representation. The employer shall:

- (1) deduct the proportionate share payment from the earnings of a nonmember employee; and
- (2) pay the amount to the employee organization.

Sec. 18. Only the exclusive representative of the employees within a bargaining unit may negotiate provisions in a collective bargaining agreement providing for the payroll deduction of any of the following:

- (1) Labor organization dues.
- (2) Fair share payment.
- (3) Initiation fees.
- (4) Assessments.

Sec. 19. Except as provided in section 17 of this chapter, deductions for dues, fees, or assessments may be made only upon an employee's written authorization and shall be continued until:

- (1) revoked by the employee in writing; or
- (2) the termination date of the applicable collective bargaining

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1 agreement.

2 **Sec. 20. A collective bargaining agreement providing that an**
 3 **employee who is not a member of the employee organization**
 4 **recognized as the exclusive representative pay a proportionate**
 5 **share assessment must safeguard the right of nonassociation based**
 6 **on bona fide religious tenets of an employee. An affected employee**
 7 **may be required to pay an amount equal to the employee's**
 8 **proportionate share, determined under a lawful proportionate**
 9 **share provision, to a nonreligious charitable organization agreed**
 10 **on by the employee and the exclusive representative to which the**
 11 **employee would otherwise pay the dues, fees, or assessments.**

12 **Sec. 21. If an affected employee referred to in section 20 of this**
 13 **chapter and the exclusive representative are unable to agree on a**
 14 **nonreligious charitable organization for payment under section 20**
 15 **of this chapter, the board may establish an approved list of**
 16 **charitable organizations to which the payments may be made.**

17 **Sec. 22. It is an unfair labor practice for an employer to do any**
 18 **of the following:**

- 19 (1) **Interfere with, restrain, or coerce an employee in the**
 20 **exercise of the rights guaranteed in this article.**
- 21 (2) **Dominate, interfere with, or assist in the formation or**
 22 **administration of an employee organization or contribute**
 23 **financial or other support to an employee organization.**
- 24 (3) **Discriminate in regard to:**
 - 25 (A) **hiring practices;**
 - 26 (B) **tenure of employment; or**
 - 27 (C) **a term or condition of employment;**
- 28 **to encourage or discourage membership in an employee**
 29 **organization.**
- 30 (4) **Discharge or otherwise discriminate against an employee**
 31 **because the employee has:**
 - 32 (A) **filed a complaint, an affidavit, or a petition; or**
 - 33 (B) **given information or testimony under this chapter or**
 34 **IC 36-13-4.**
- 35 (5) **Refuse to bargain collectively in good faith with an**
 36 **exclusive representative concerning the following:**
 - 37 (A) **Wages, including rates of pay.**
 - 38 (B) **Salaries.**
 - 39 (C) **Hours.**
 - 40 (D) **Working conditions.**
 - 41 (E) **Other terms or conditions of employment.**
- 42 (6) **Fail or refuse to comply with this chapter or IC 36-13-4**

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through IC 36-13-5.

Sec. 23. It is an unfair labor practice for an employee organization to do any of the following:

(1) Interfere with, restrain, or coerce:

(A) an employee in the exercise of the rights guaranteed in this article; or

(B) an employer in the selection of an exclusive representative for collective bargaining or the adjustment of grievances.

(2) Cause or attempt to cause an employer to discriminate against an employee in violation of section 22 of this chapter.

(3) Refuse to bargain collectively in good faith with an employer if the employee organization is the exclusive representative.

(4) Engage in or influence employees to engage in a strike.

(5) Fail to comply with this article.

Sec. 24. It is not an unfair labor practice for an:

(1) employer to confer during working hours with an employee without loss of time or pay by the employee; or

(2) employee organization to adopt rules concerning the acquisition or retention of membership in the employee organization.

Chapter 4. Complaints

Sec. 1. (a) An employer, employee, employee organization, or exclusive representative who is aggrieved by an alleged unfair labor practice may file a complaint with the board.

(b) The board shall:

(1) serve a copy of the complaint on the respondent; and

(2) notify the respondent of the date, time, and place of a hearing on the complaint.

Sec. 2. (a) The board shall hold a hearing on a complaint not:

(1) less than five (5) days; or

(2) more than thirty (30) days;

after the complaint is served on the respondent.

(b) A notice of a hearing may not be issued based on an alleged unfair labor practice occurring more than ninety (90) days before the filing of the complaint, unless the complainant was prevented from filing the complaint because of service in the armed forces of the United States. In that event, the complaint must be filed not more than ninety (90) days after the complainant's discharge from the armed forces of the United States.

Sec. 3. (a) A complaint may be amended by the complainant at

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any time before the issuance of an order by the board if the board finds that the respondent would not be unfairly prejudiced by the amendment.

(b) The respondent shall file an answer to the original or amended complaint with the board not later than the date set for the hearing. The complainant and respondent are parties and are entitled to appear in person or otherwise give testimony at the hearing. The board may allow an interested person to intervene in the hearing and present testimony.

Sec. 4. The board is not bound by the rules of evidence in conducting a hearing under this chapter. Testimony received at a hearing shall be reduced to writing and filed with the board. The board may hear:

(1) further testimony; or

(2) arguments then or at a later time;

with notice given to the parties.

Sec. 5. (a) In a complaint proceeding under this chapter, the board shall make a determination based on a preponderance of the evidence.

(b) If the board determines that the respondent was or is engaged in an unfair labor practice, the board shall state the findings of fact and serve on the respondent an order that:

(1) requires the respondent to cease the unfair labor practice and take affirmative action, including reinstatement of an employee with or without back pay, to carry out this article; and

(2) may further require the respondent to submit reports to the board showing the extent of the respondent's compliance with the order.

Sec. 6. If the board makes a determination of no unfair labor practice, the board shall state the findings of fact and dismiss the complaint.

Sec. 7. A hearing may be conducted by:

(1) a member of the board; or

(2) a hearing examiner or an agency designated by the board; instead of by the full board. However, after the hearing, the member, hearing examiner, or agency shall serve on the parties and file with the board proposed findings and a recommended order.

Sec. 8. If an exception is not filed by a party within:

(1) twenty (20) days after service on the parties; or

(2) a period authorized by the board;

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1 a recommended order filed under section 7 of this chapter becomes
2 the order of the board.

3 Sec. 9. If an exception to a recommended order filed under
4 section 7 of this chapter is filed, the full board shall grant review if
5 the board determines that the exception raises a substantial issue
6 of fact or law.

7 Sec. 10. If the board determines that an exception to a
8 recommended order filed under section 7 of this chapter does not
9 raise a substantial issue of fact or law, the recommended order
10 becomes the order of the board.

11 Sec. 11. An order of the board under section 8 or 10 of this
12 chapter is a final order and binding on the parties to the complaint,
13 subject to judicial review under sections 12 through 22 of this
14 chapter.

15 Sec. 12. Not later than thirty (30) days after the board's:

16 (1) determination under IC 36-13-3-14; or

17 (2) determination and order under section 5, 6, 7, 8, or 10 of
18 this chapter;

19 the board or the complainant may petition the circuit or superior
20 court in the county in which the employer is located for the
21 enforcement of the board's determination and order.

22 Sec. 13. A party aggrieved by a determination under
23 IC 36-13-3-14 or by the board's order under this chapter may
24 petition the circuit or superior court for a review of the order. If a
25 petition is not filed within the thirty (30) day period computed
26 under:

27 (1) section 12(1) of this chapter; or

28 (2) section 12(2) of this chapter;

29 the order or determination may not be reviewed.

30 Sec. 14. The commencement of proceedings after the filing of a
31 petition under section 13 of this chapter does not operate as a stay
32 of the board's order or a determination made under IC 36-13-3-14
33 unless specifically ordered by the court.

34 Sec. 15. After a petition is filed under section 13 of this chapter,
35 the court shall serve notice of the petition on the opposing party
36 and send a copy to the board.

37 Sec. 16. In a proceeding filed under section 13 of this chapter, an
38 objection that was not made at the hearing conducted under
39 section 2 of this chapter may not be considered by the court, unless
40 the failure to make the objection is excused because of
41 extraordinary circumstances.

42 Sec. 17. If either party in a proceeding based on a petition filed

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under section 13 of this chapter:

(1) applies to the court for leave to introduce additional evidence; and

(2) shows to the satisfaction of the court that:

(A) the additional evidence is material; and

(B) there were reasonable grounds for the failure to introduce the evidence in a hearing conducted under section 2 of this chapter;

the court may order the board to take the additional evidence and make it a part of the record.

Sec. 18. After a court orders the board to make additional evidence a part of the record under section 17 of this chapter, the board:

(1) may modify the findings of fact by reason of the additional evidence; and

(2) shall file any:

(A) modified findings; and

(B) recommendations for a modification or setting aside of the original order;

with the court.

Sec. 19. A party that petitions a court for review of an order of the board under section 13 of this chapter must file a record of the hearing conducted under section 2 of this chapter, certified by the board, with the court. Until a record of the hearing is filed, the board may, at any time upon reasonable notice, modify or set aside all or part of a finding or an order made or issued by the board.

Sec. 20. After the record of a hearing conducted under section 2 of this chapter is filed with the court under section 19 of this chapter, the jurisdiction of the court to:

(1) modify;

(2) set aside; or

(3) enforce;

a board's order and to grant other appropriate relief is exclusive. The court's judgment and decree are final, but are subject to review in accordance with the rules of court.

Sec. 21. A petition filed under section 13 of this chapter shall be heard not later than sixty (60) days after the petition is filed. The petition takes precedence over all other civil matters except those filed earlier under this article.

Sec. 22. In a court's review of an order of the board, the original or modified findings of fact by the board with respect to questions of fact are conclusive if supported by substantial evidence on the

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record considered as a whole.

Chapter 5. Contracts; Negotiations; Mediation and Arbitration

Sec. 1. Employers and employees shall:

(1) bargain collectively; and

(2) enter into a contract embodying the matters on which the parties have agreed during the collective bargaining process.

A collective bargaining contract may be in effect for more than one (1) year.

Sec. 2. A contract may not include provisions in conflict with any of the following:

(1) A right or benefit established by federal or state law.

(2) Employee rights described in this article.

(3) Employer rights described in this article.

Sec. 3. A contract entered into under section 1 of this chapter must contain a grievance resolution procedure that applies to all employees in the bargaining unit. This procedure must provide for the final and binding arbitration of disputes concerning the administration or interpretation of the contract. The arbitration provisions of the contract are subject to IC 34-57-1.

Sec. 4. Collective bargaining negotiations must begin by May 1 of a year in which a collective bargaining agreement is to expire. The parties shall inform the board of the results of collective bargaining.

Sec. 5. If the exclusive representative and the employer have not agreed on a contract forty-five (45) days after collective bargaining begins under section 4 of this chapter, either party may:

(1) notify the board of the inability to reach an agreement; and

(2) ask the board for mediation to begin.

Sec. 6. The board shall provide a mediator to the parties at the board's expense not later than seven (7) days after the board is notified under section 5 of this chapter.

Sec. 7. The mediator provided under section 6 of this chapter shall:

(1) communicate with both the employer and the exclusive representative; and

(2) aid the employer and exclusive representative in entering into a contract.

Sec. 8. If a dispute has not been resolved within twenty-one (21) days after either party makes a request for mediation under section 5 of this chapter, the employer or exclusive representative shall submit a written request for arbitration to the board not later

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1 than seven (7) days after the expiration of the twenty-one (21) day
2 period.

3 **Sec. 9. Not later than ten (10) days after a request for**
4 **arbitration must be filed under section 8 of this chapter, the**
5 **employer and the exclusive representative shall:**

- 6 (1) each select a member of an arbitration panel; and
7 (2) advise each other and the board of the selections made
8 under this section.

9 **Sec. 10. Not later than seven (7) days after the request of either**
10 **party for arbitration is submitted to the board under section 8 of**
11 **this chapter, the board shall select five (5) persons from the**
12 **permanent staff of factfinders or panel of part-time factfinders**
13 **established under IC 20-29-8-6 as nominees to serve as impartial**
14 **arbitrators on the arbitration panel. Not later than five (5) days**
15 **after the selection, the parties shall each alternately strike the**
16 **names of two (2) of the nominees, with the first party to request**
17 **arbitration under section 8 of this chapter striking first.**

18 **Sec. 11. The nominee remaining after the striking process under**
19 **section 10 of this chapter and the members selected by the**
20 **employer and the exclusive representative under section 9 of this**
21 **chapter constitute the arbitration panel. The panel member not**
22 **struck under section 10 of this chapter is the chairperson of the**
23 **arbitration panel.**

24 **Sec. 12. (a) The chairperson of the arbitration panel shall:**

- 25 (1) schedule a hearing to begin not later than fifteen (15) days
26 after the panel's membership is selected; and
27 (2) give notice of the date, time, and place of the hearing to the
28 parties.

29 (b) The hearing shall be held at a location determined by the
30 board. The chairperson shall preside over the hearing and take
31 testimony.

32 **Sec. 13. The following rules apply to an arbitration hearing held**
33 **under this chapter:**

- 34 (1) Oral or documentary evidence and other data considered
35 relevant by the arbitration panel may be received in evidence.
36 (2) The hearing is informal, and the rules of evidence do not
37 apply.
38 (3) A verbatim record of the hearing shall be made.
39 (4) The arbitrator shall arrange for the necessary recording
40 service.
41 (5) Transcripts may be ordered at the expense of the party
42 ordering the transcripts, but the transcripts are not necessary

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for a decision by the arbitration panel.

Sec. 14. If a member of an arbitration panel assembled under this chapter is a public officer or employee, the public officer or employee continues on the payroll of the employer without loss of pay.

Sec. 15. A hearing conducted by an arbitration panel under this chapter may be adjourned periodically but must be concluded not later than thirty (30) days after the date of commencement unless otherwise agreed to by the parties. Arbitration proceedings under this chapter may not be interrupted or terminated by an unfair labor practice charge filed by either party at any time.

Sec. 16. An arbitration panel may do the following:

(1) Administer oaths.

(2) Require the attendance of witnesses and the production of evidence considered material to a determination of an issue in dispute.

(3) Issue a subpoena to secure a witness and evidence.

Sec. 17. If:

(1) a person refuses to obey a subpoena or to be sworn or to testify; or

(2) a witness, a party, or an attorney is guilty of contempt at a hearing;

the arbitration panel may request the circuit or superior court in the county where the hearing was held to issue an order.

Sec. 18. The failure to obey an order issued at the request of an arbitration panel under section 17 of this chapter may be punished by the court as contempt.

Sec. 19. Before an award is made, the chairperson of an arbitration panel may remand the dispute to the parties for further collective bargaining for a period not to exceed two (2) calendar weeks. If the dispute is remanded, the time provisions of this chapter are extended for a period equal to the period of the remand. The chairperson of the arbitration panel shall notify the board of a remand under this section.

Sec. 20. (a) Not later than the conclusion of a hearing held under section 12 of this chapter, the arbitration panel shall:

(1) identify the economic issues in dispute; and

(2) direct each party to submit to:

(A) the arbitration panel; and

(B) the other parties;

the party's last offer of settlement on each economic issue within the time limit the panel prescribes.

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(b) The arbitration panel's determination is conclusive concerning the:

- (1) identification of issues that are in dispute; and
- (2) economic issues.

Sec. 21. (a) The arbitration panel shall make written findings of fact and adopt a written opinion not later than:

- (1) thirty (30) days after the conclusion of a hearing; or
- (2) the end of any further additional periods to which the parties agree.

(b) The arbitration panel shall mail a copy of the opinion to the:

- (1) parties;
- (2) representatives of the parties; and
- (3) board.

Sec. 22. (a) As to economic issues, the arbitration panel shall adopt the last offer of settlement on an issue by issue basis that more nearly complies with the applicable factors prescribed in section 23 of this chapter.

(b) The findings, opinions, and order of the arbitration panel as to all other issues must also be based on the applicable factors prescribed in section 23 of this chapter.

Sec. 23. If there is no agreement between the parties, or if there is an agreement but the parties have begun negotiations or discussions for a new agreement or an amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base the arbitration panel's findings, opinions, and order on the following factors:

- (1) The lawful authority of the employer.
- (2) The stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the employer to meet the costs.
- (4) A comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of employees performing similar services and with other employees generally in comparable communities.
- (5) The average consumer prices for goods and services.
- (6) The overall compensation currently received by the employees, including the following:
 - (A) Direct wage compensation, vacations, holidays, and other excused time.
 - (B) Insurance, pension, medical, and hospitalization

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benefits.

(C) The continuity and stability of employment.

(7) Changes in any of the circumstances during the arbitration proceedings.

(8) Other factors normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, factfinding, or arbitration between parties in public or private employment.

Sec. 24. If an employer's fiscal year begins:

(1) after the initiation of arbitration procedures under this chapter; and

(2) before the arbitration decision or enforcement of the decision;

this occurrence does not render a dispute moot or impair the jurisdiction or authority of the arbitration panel or the decision.

Sec. 25. Except as provided in section 26 of this chapter, an increase in compensation awarded by an arbitration panel under this chapter is effective at the beginning of the employer's fiscal year beginning on or after the date of the arbitration award.

Sec. 26. If the employer's fiscal year begins after the initiation of arbitration procedures but before the arbitration decision is made, section 25 of this chapter does not apply. However, an increase in compensation awarded by an arbitration panel under this chapter may be retroactive to the beginning of the fiscal year.

Sec. 27. The parties may amend or modify an award of arbitration under this chapter by stipulation.

Sec. 28. Upon petition by the employer or the exclusive representative, an order of an arbitration panel under this chapter may be reviewed by the circuit or superior court of the county in which the employer is located. The arbitration panel's order may be reviewed only on the following grounds:

(1) The arbitration panel was without authority or exceeded the arbitration panel's authority.

(2) The order is arbitrary or capricious.

(3) The order was procured by fraud, collusion, or unlawful means.

Sec. 29. A petition for review of an order of an arbitration panel under section 28 of this chapter must be filed with the court not later than ninety (90) days after the issuance of the arbitration order. The pendency of the proceeding for review does not automatically stay the order of the arbitration panel.

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1 **Sec. 30.** If the court in proceedings on a petition for review of an
 2 order of an arbitration panel finds the appeal or petition frivolous,
 3 the party receiving the final adverse order from the court shall pay
 4 reasonable attorney's fees and costs to the successful party.

5 **Sec. 31.** If the court's decision in a proceeding on a petition for
 6 review of an order of an arbitration panel affirms an award of
 7 money, a retroactive award bears interest at the rate of twelve
 8 percent (12%) annually from the effective retroactive date.

9 **Sec. 32.** During the pendency of proceedings before an
 10 arbitration panel, current wages, hours, and other conditions of
 11 employment may not be changed by either party without the
 12 consent of the other. However, a party may consent to a change
 13 without prejudice to the party's rights or position under IC 36-13-3
 14 or this chapter.

15 **Sec. 33.** An employee covered under IC 36-13-3 and this chapter
 16 may not withhold services.

17 **Sec. 34.** An employer may not lockout or prevent an employee
 18 from performing services.

19 **Sec. 35.** (a) All terms decided by an arbitration panel under this
 20 chapter must be included in an agreement to be submitted to the
 21 employer's legislative body for ratification and:

22 (1) adoption by ordinance if the unit is a county or
 23 municipality; or

24 (2) passage of a resolution if the unit is a township.

25 (b) The legislative body of the unit shall review each of the terms
 26 decided by an arbitration panel under this chapter.

27 **Sec. 36.** If the legislative body of a unit does not reject a term of
 28 an arbitration panel's decision by a vote of at least sixty percent
 29 (60%) of all the members of the body not later than twenty (20)
 30 days after the issuance of the decision, the term becomes a part of
 31 the collective bargaining agreement.

32 **Sec. 37.** If the legislative body of a unit rejects a term of the
 33 arbitration panel's decision, the legislative body must issue written
 34 reasons for the rejection of the term to the parties not later than
 35 twenty (20) days after the rejection. The parties shall return to the
 36 arbitration panel not later than thirty (30) days after the issuance
 37 of the reason for rejection for further proceedings and the issuance
 38 of a supplemental decision regarding the rejected terms.

39 **Sec. 38.** A supplemental decision made under section 37 of this
 40 chapter by an arbitration panel must be submitted to the legislative
 41 body of a unit for ratification in accordance with sections 35
 42 through 37 of this chapter.

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1 **Sec. 39. The voting requirements of section 36 of this chapter**
 2 **apply to all disputes submitted to arbitration, notwithstanding**
 3 **inconsistent voting requirements that may be contained in a**
 4 **collective bargaining agreement between the parties.**

5 **Sec. 40. The employer shall pay all reasonable costs of a**
 6 **supplemental proceeding under section 37 of this chapter,**
 7 **including the exclusive representative's reasonable attorney's fees**
 8 **as established by the board.**

9 **Sec. 41. The employer and the exclusive representative may**
 10 **agree to submit unresolved disputes concerning wages, hours, and**
 11 **terms and conditions of employment to an alternative form of**
 12 **impasse resolution without regard to this chapter.**

13 **Sec. 42. Except as provided in sections 6 and 40 of this chapter,**
 14 **the cost of procedures under this chapter, as determined by the**
 15 **board, shall be paid equally by the parties. The board shall**
 16 **establish a procedure for the collection and payment of the cost.**

17 **Sec. 43. After the exhaustion of an arbitration mandated by this**
 18 **chapter or procedures mandated by a collective bargaining**
 19 **agreement, a civil action for the violation of an agreement between**
 20 **an employer and a labor organization representing employees may**
 21 **be brought by either party to the agreement in the circuit or**
 22 **superior court of the county in which the employer is located.**

23 **Chapter 6. Miscellaneous Provisions**

24 **Sec. 1. If a provision of this chapter, IC 36-13-3, IC 36-13-4, or**
 25 **IC 36-13-5 conflicts with an Indiana statute, rule, or executive**
 26 **order relating to wages, hours, or other terms and conditions of**
 27 **employment and employment relations, this chapter, IC 36-13-3,**
 28 **IC 36-13-4, and IC 36-12-5 prevail.**

29 **Sec. 2. This chapter, IC 36-13-3, IC 36-13-4, and IC 36-13-5**
 30 **provide the exclusive manner for an employer to exercise the**
 31 **power to bargain collectively with the employer's employees.**

32 **Sec. 3. An employee or exclusive representative may not**
 33 **participate in a strike against an employer.**

34 **Sec. 4. An employee engaging in a strike is subject to discharge**
 35 **by the employer, as provided in IC 36-8-3-4.**

36 **Sec. 5. An exclusive representative that engages in or sanctions**
 37 **a strike loses the right to represent the employees for one (1) year**
 38 **after the date of the action.**

39 **Sec. 6. An employer may not pay an employee for days during**
 40 **which the employee was engaged in a strike.**

41 **SECTION 2. [EFFECTIVE JULY 1, 2007] (a) This act does not:**

42 **(1) apply to or abrogate a contract or an agreement in effect**

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on June 30, 2007; or

(2) preclude arbitration on a provision in a contract or an agreement referred to in subdivision (1).

(b) This SECTION expires July 1, 2010.

SECTION 3. [EFFECTIVE JULY 1, 2007] (a) Notwithstanding IC 36-13-3-5, as added by this act, the Indiana education employment relations board shall carry out the duties imposed upon it under IC 36-13-3-5, as added by this act, under interim written guidelines approved by the chairperson of the Indiana education employment relations board.

(b) This SECTION expires on the earlier of the following:

(1) The date rules are adopted by the board under IC 4-22-2.

(2) December 31, 2008.

SECTION 4. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 36-13-3-8, as added by this act, the Indiana education employment relations board shall carry out the duties imposed upon it under IC 36-13-3-8, as added by this act, under interim written guidelines approved by the chairperson of the Indiana education employment relations board.

(b) This SECTION expires on the earlier of the following:

(1) The dates rules are adopted under IC 4-22-2.

(2) December 31, 2008.

SECTION 5. An emergency is declared for this act.

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